

TO: Senator Gary Winfield, Co-Chairman
Representative Larry Butler, Co-Chairman
Members of the Connecticut Housing Committee

FROM: Alex Taubes and Dennis Zeveloff, Students, Ludwig Center for Community and Economic Development, Yale Law School, on behalf of the Open Communities Alliance

DATE: February 17, 2015

RE: HB 6461: An Act Concerning the Data Collection and Analysis of Affordable Housing

RECOMMENDATION: SUPPORT HB 6461

Senator Winfield, Representative Butler, and Members of the Connecticut Housing Committee:

My name is Alex Taubes. I am a Yale Law student and resident of Madison, CT. I support HB 6461 because Connecticut must improve its data collection and analysis of affordable housing.

As students in the Ludwig Center for Community and Economic Development at Yale Law School, my colleague Dennis Zeveloff and I have researched issues related to community development, housing mobility, and barriers to racial and economic integration in Connecticut.

One of our nation's most important civil rights statutes, the Fair Housing Act of 1968, requires the Department of Housing and Urban Development (HUD) to administer its programs in a manner that affirmatively furthers fair housing.¹ This means more than merely eliminating discrimination. HUD thus requires states and other recipients of program funding, including Connecticut, to analyze and address barriers to fair housing choice within their jurisdictions.²

Connecticut's failure to collect adequate data about its affordable housing programs compromises our ability to meet our Fair Housing Act obligations. Connecticut, its towns³, and its public housing authorities receive millions of dollars in HUD funding

¹ Fair Housing Act §808(e)(5), codified at 42 U.S.C.A. § 3608(e)(5) (West).

² DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, FAIR HOUSING PLANNING GUIDE: VOLUME 1 2-3 (1996), available at <http://www.hud.gov/offices/fheo/images/fhpg.pdf>.

³ **Many communities in Connecticut are recipients of HUD funding, either through the CDBG or HOME programs, from large cities like Hartford and New Haven to smaller towns like Milford, Fairfield, and Guilford.** CONNECTICUT DEPARTMENT OF HOUSING, State of Connecticut 2013 Consolidated Annual Performance and Evaluation

each year. But the state lacks even the basic building block of any comprehensive analysis of its affordable housing programs—a list of all subsidized housing in the state with detailed residential data. The state needs such data, at the very least, in order to track and measure progress toward breaking down barriers to fair housing within our state.

Other data that is critical to collect for appropriate analysis and planning is information on resident characteristics, number of bedrooms in subsidized units, and an annual analysis of affirmatively furthering progress. Furthermore, this information should be collected from all agencies that support housing in the state, not merely the Department of Housing and the Connecticut Housing Finance Authority. In order to meet the need for data collection and analysis, the state should allocate additional funding to the Department of Housing.

In recent years, several jurisdictions, such as Marin County CA, Westchester County NY, and Houston, TX, have been subject to legal action—initiated by civil rights groups and HUD alike—for failing adequately to collect data about, analyze, and ultimately work to eliminate impediments to fair housing choice. **By failing to collect adequate data, Connecticut is in danger of repeating their mistakes.** Improving data collection by passing HB 6461 is an important first step toward proactively addressing our state’s fair housing issues.

Case Studies: Westchester County, NY, Marin County, CA, & Houston, TX

Westchester County, New York, Marin County, California, and to a lesser extent, Houston, Texas bear some similarities to Connecticut. Like Connecticut, all three jurisdictions suffer from high rates of racial and economic segregation and isolation and have areas of concentrated poverty. Also like Connecticut, Westchester and Marin in particular are high-income areas that have a severe lack of affordable housing, making it expensive to live within those jurisdictions.

Unlike Connecticut, all three jurisdictions have been subject to recent legal action regarding their obligations under the Fair Housing Act as recipients of HUD funds. Most importantly, these jurisdictions could have avoided HUD action if they had more proactively analyzed and addressed impediments to fair housing choice.

Westchester County, New York

To see the urgency of addressing impediments to fair housing choice in Connecticut, we need only look across the border to Westchester County. As part of a 2009 settlement to a False Claims Act lawsuit, the county agreed to pay \$62.5 million—including \$10 million to the Anti-Discrimination Center, which brought the suit, and its co-counsel.⁴ The basis

Report (September 2014), available at

http://www.ct.gov/doh/lib/doh/2013_final_per_w_revise_appendix.pdf.

⁴ Consent Decree (August 10, 2009), *United States ex rel. Anti-Discrimination Center v. Westchester County*, 668 F.Supp.2d 548 (S.D.N.Y. 2009), ¶ 3-4, available at <http://www.antibiaslaw.com/list/consent-decree>.

of the lawsuit was that the county's certification to HUD that it was affirmatively furthering fair housing—a routine part of receiving program funds—was a false claim given the county's failure to remove barriers to fair housing choice.⁵

In its complaint against Westchester County, the Anti-Discrimination Center found several faults in the county's practices. First—and importantly for this hearing—the Center faulted Westchester for failing to conduct an adequate analysis of fair housing impediments.⁶ Second, and also important, it faulted the county for failing to take steps to overcome the impediments it had identified.⁷ Ultimately, federal district court judge Denise Cote found in favor of the plaintiffs, holding that Westchester had defrauded the government during the time in question.⁸ In response, the county settled the case and entered a federal consent decree. HUD supervision of the county's zoning and affordable housing practices continues to this day.

To be sure, Westchester County's failures were not limited to data collection. As recounted in the complaint, the county's most recent analysis of impediments to fair housing choice failed even to mention housing segregation, let alone provide comprehensive analysis of the data and a plan for addressing the issue. That being said, the settlement agreement between Westchester and HUD obligates the county to undertake better data collection practices moving forward.⁹ Failing to collect that kind of data could signal to HUD that Connecticut is similarly ignoring its fair housing obligations.

Marin County, California

The litigation faced by Westchester County is not an aberration. Judge Cote's ruling, and the HUD consent decree that emerged from it, have formed what national fair housing advocates are calling the "Westchester County Doctrine."¹⁰ Marin County has shown that legal problems from failure to analyze fair housing issues need not arise from litigation initiated by a third party. In the Marin case, legal action arose out of HUD's routine review of fair housing practices in the county.¹¹

⁵ ANTI-DISCRIMINATION CENTER, Westchester Case, available at <http://www.antibiaslaw.com/westchester-case>.

⁶ Complaint, United States ex rel. Anti-Discrimination Center v. Westchester County, 06 cv-2860 (April 12, 2006) ¶ 32-43, available at http://www.antibiaslaw.com/sites/default/files/all/WestchesterFCAcomplaint_0.pdf.

⁷ Complaint, *id.*, at ¶44-67.

⁸ United States ex rel. Anti-Discrimination Center v. Westchester County, 668 F.Supp.2d 548, 548 (S.D.N.Y. Feb. 24, 2009) (Cote, District Judge).

⁹ Consent Decree, *supra* note 3, at ¶32(a).

¹⁰ PLANNING/COMMUNICATIONS, Analyses of Impediments to Fair Housing Choice, available at http://planningcommunications.com/ai/index.htm#Westchester_County_Doctrine.

¹¹ Voluntary Compliance Agreement, Department of Housing and Urban Development & County of Marin 2 (December 10, 2010), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=MarinCountyCAVCA.pdf>.

Like Westchester County (and Connecticut), Marin County is an affluent economic region with severe economic and racial segregation. The most important lesson to draw from Marin County, though, is that data collection, record keeping, and thorough analysis matter. In 2009, HUD issued an investigative report finding numerous violations of Marin County's obligation to affirmatively further fair housing.¹² The HUD investigation found violations regarding record-keeping, citizen participation, communications and advertising, and – crucially – deficiencies in the county's analysis of impediments to fair housing choice.¹³

As a result of the violations, Marin County has entered into a voluntary compliance agreement (VCA) with HUD. The VCA requires Marin County to prepare a new analysis of impediments to fair housing choice, and imposed special requirements on the county's analysis. Specifically, Marin is required to collect racial, ethnic, gender, and disability data for all recipients, sub-recipients, participants, beneficiaries, and people on the wait list of all CDBG and HOME funded programs and contracts.¹⁴

This data – on the demographic profile of participants in Marin's affordable housing programs – is precisely the data that Connecticut lacks, making it hard to tell whether the state is vulnerable to a similar challenge. By proactively collecting this data, before a court order or administrative action, Connecticut could head off a challenge before it becomes a problem. Collecting the data is not enough, as the Fair Housing Act also requires us to *address* the problems we find, but it is a solid—and necessary—first step.

Houston, Texas

Although Houston bears fewer demographic similarities to Connecticut than the other case studies, it is worth mentioning here because HUD action has been directly tied to the city's failure to collect adequate data.

Rejecting Houston's analysis of impediments to fair housing choice, HUD recently faulted the city for its failure to collect "geodemographic data that will allow for review and analysis of past siting decisions for HUD assisted, tax credit, and other affordable housing . . . both in areas that are concentrated by race or national origin and by poverty and in less concentrated areas that offer higher opportunity."¹⁵ The department's rejection of Houston's AI puts the city's considerable federal assistance at risk.

¹² DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *Final Investigative Report* (2009), available at http://www.publicadvocates.org/sites/default/files/library/final_investigative_report_hud_2009.pdf.

¹³ *Id.*

¹⁴ *Voluntary Compliance Agreement*, *supra* note 9, at 6-9.

¹⁵ Letter, Review of Houston's Analysis of Impediments to Fair Housing Choice, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, November 30, 2011, available at <http://texashousers.net/2012/02/08/hud-rejects-city-of-houston-fair-housing-effort/> (bottom of page).

Connecticut's most recent analysis of impediments suffers from many of the same deficiencies as the Houston analysis rejected by HUD. The analysis fails to include any hard data about placement of subsidized housing, concentrated poverty, or disparate access to housing programs and assistance. This seems like a glaring omission, given that the same report identifies allocation of Low Income Housing Tax Credits and program monitoring of CDBG funds as state impediments to fair housing choice.¹⁶

Connecticut is not Texas, but our data collection efforts have a lot in common with the largest city in the Lone Star State. To avoid a similar rejection of our state's efforts to affirmatively further fair housing, we must do more to collect and analyze data on our state's housing issues.

Conclusion: Data Collection and Analysis for Fair Housing Must Improve

Connecticut's most recent analysis of impediments to fair housing choice was issued in 2006.¹⁷ Given that HUD's *Fair Housing Planning* Guide asks jurisdictions to update their analyses of impediments every 3-5 years, a new analysis of impediments in Connecticut is long overdue.¹⁸

Simply writing a new analysis of impediments to fair housing choice, however, is not enough for our state to comply with its obligations under the Fair Housing Act. HUD funding recipients are required to conduct a periodic self-assessment of their own actions to promote fair housing choice, maintain records on the impact of actions taken to further fair housing, and define objectives for making further progress.¹⁹ All of these goals will require us to know more about our current housing programs and the progress they are making to affirmatively further fair housing.

Although HUD does not specifically require Connecticut to produce its own data for making such analyses, without it, Connecticut cannot realistically evaluate its own programs without data on them. This is especially true given HUD's new pending rule on affirmatively furthering fair housing.²⁰ The main thrust of the new rule is to require participants, like the State of Connecticut, to take a "more serious look" at the "fair housing context" within their jurisdictions.²¹ Instead of merely preparing an analysis of impediments to fair housing choice, Connecticut and its towns will be required to prepare

¹⁶ DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT, State of Connecticut's Analysis of Impediments to Fair Housing Choice Update 31 (2006), available at http://www.ct.gov/doh/lib/doh/housing_plans/analysis_of_impediments_10-2006.pdf.

¹⁷ Id.

¹⁸ Fair Housing Planning Guide, *supra* note 2, at 2-6.

¹⁹ Fair Housing Planning Guide, *supra* note 2, at 2-23, 2-29, & 3-4.

²⁰ NOTICE OF PROPOSED RULEMAKING, Affirmatively Furthering Fair Housing, 78 Fed. Reg. 139 (July 19, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-07-19/pdf/2013-16751.pdf>

²¹ DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AFFH Data Documentation DRAFT 1 (June 2013), available at <http://www.regulations.gov/#!documentDetail;D=HUD-2013-0066-0003>.

a comprehensive “Assessment of Fair Housing” that requires approval by HUD.²² In this process, HUD will provide much of the data necessary to build the Assessment of Fair Housing. But since Connecticut has affordable housing programs separate from those financed by HUD, e.g., units created because of §8-30g or the HOME program, more data must be collected. Connecticut also must track data on its affordable housing units in order to fully explain our efforts to affirmatively further fair housing as will soon be required under the new HUD rule.

Finally, without local data about all of our affordable housing programs, the state cannot track or measure progress on meeting its goals over time. **HB 6461 will allow our state to collect important data and should provide funds for analyzing the data, so that Connecticut can measure its compliance with fair housing obligations.**

Holes in data collection about affordable housing prevent Connecticut from track its progress toward safeguarding the right to fair housing for all of our residents. Passing HB 6461 is an important first step toward breaking down our state’s barriers to fair housing choice and avoiding legal liability for the failure to understand and address those barriers. I urge a joint favorable report for HB 6461 and am willing to answer any of your questions.

²² DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, A New Assessment Process to Affirmatively Further Fair Housing 3 (2014), *available at* http://www.huduser.org/portal/publications/pdf/affht_userFriendlyGuide.pdf